First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 1909

AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-4-6.1-2.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2.3. (a) The enterprise zone fund is established. Revenue from the registration fee required under section 2 of this chapter shall be deposited in the fund. The fund shall be administered by the department of commerce.

(b) Upon the recommendation of the department of commerce, the fund may be used to:

(1) pay salaries of employees of the board; ~~and~~

(2) pay administrative expenses of the enterprise zone program; **and**

(3) provide grants to enterprise zone associations for brownfield remediation within enterprise zones.

However, money in the fund may not be expended unless it has been appropriated by the general assembly and allotted by the budget agency.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) Money in the fund at the end of a fiscal year does not revert to the state general fund. **The department of commerce may, after making the payments required by subsection (b)(1) and (b)(2), use money remaining in the fund at the end of a fiscal year to provide grants to enterprise zone associations for brownfield remediation activities. The department of commerce shall develop appropriate applications and may develop grant allocation guidelines, without complying with IC 4-22-2, for awarding grants under this subsection. The grant allocation guidelines must take into consideration the competitive impact of brownfield redevelopment plans on existing zone businesses.**

SECTION 2. IC 6-1.1-42-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1997 (RETROACTIVE)]: Sec. 7. A designating body may, **by resolution,** do the following:

(1) Impose a fee for filing an application to designate an area as a zone or to approve a deduction. The fee may be sufficient to defray actual processing and administrative costs associated with the application.

(2) Establish general written standards for declaring an area as a zone. ~~or granting a deduction under this chapter.~~ The written standards must be reasonably related to accomplishing the purposes of this chapter.

SECTION 3. IC 6-1.1-42-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1997 (RETROACTIVE)]: Sec. 12. (a) The designating body shall determine whether an area should be designated a brownfield revitalization zone.

(b) A designating body may designate an area as a brownfield revitalization zone only if the following findings are made in the affirmative:

(1) The applicant:

(A) has never had an ownership interest in an entity that contributed; and

(B) has not contributed;

~~to contamination~~ **a contaminant** (as defined in ~~IC 13-11-2-43)~~ **IC 13-11-2-42)** that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management.

(2) The area described in section 8 of this chapter qualifies as a brownfield, as determined under the written standards adopted by the department of environmental management.

(3) The area described in section 8 of this chapter is substantially under-utilized or nonproductive without remediation.

(4) The applicant can successfully obtain a certificate of completion of a voluntary remediation for the area described in section 8 of this chapter under IC 13-25-5-16.

(5) The estimate of the value of the remediation and redevelopment is reasonable for projects of that nature.

(6) The estimate of the number of individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described remediation and redevelopment.

(7) The estimate of the annual salaries of those individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described remediation and redevelopment.

(8) Any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed described remediation and redevelopment.

(9) The totality of benefits is sufficient to justify the establishment of a zone.

SECTION 4. IC 6-1.1-42-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1997 (RETROACTIVE)]: Sec. 14. A person who filed a written remonstrance with the designating body before the adjournment of the public hearing required under section 11 of this chapter and who is aggrieved by the final action taken may, within ten (10) days after that final action is taken under section 13 of this chapter, initiate an appeal of that action by filing in the office of the clerk of the circuit or superior court a copy of the ~~order of the designating body~~ **resolution adopted under section 9 of this chapter, any modifications made under section 13 of this chapter,** and the person's remonstrance against ~~that order,~~ **the resolution,** together with a bond conditioned to pay the costs of the appeal if the appeal is determined against the person. The only ground of appeal that the court may hear is whether the proposed project will meet the qualifications for granting an assessed valuation deduction for the property under this chapter. The burden of proof is on the appellant.

SECTION 5. IC 6-1.1-42-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1997 (RETROACTIVE)]: Sec. 22. (a) The designating body shall determine whether to approve a deduction.

(b) A designating body may not grant a deduction for a facility described in IC 6-1.1-12.1-3(e).

(c) A property owner may not receive a deduction under this chapter for repairs or improvements to real property if the owner receives a

deduction under either IC 6-1.1-12.1, IC 6-1.1-12-18, IC 6-1.1-12-22, or IC 6-1.1-12-28.5 for the same property.

(d) A designating body may approve a deduction only if the following findings are made in the affirmative:

(1) The applicant:

(A) has never had an ownership interest in an entity that contributed; and

(B) has not contributed;

~~to contamination~~ **a contaminant** (as defined in ~~IC 13-11-2-43)~~ **IC 13-11-2-42)** that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management.

(2) The proposed improvement or property will be located in a zone.

(3) The estimate of the value of the remediation and redevelopment is reasonable for projects of that nature.

(4) The estimate of the number of individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described remediation and redevelopment.

(5) The estimate of the annual salaries of those individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described remediation and redevelopment.

(6) Any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed described remediation and redevelopment.

(7) The totality of benefits is sufficient to justify the deduction.

SECTION 6. IC 6-1.1-42-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1997 (RETROACTIVE)]: Sec. 23. **With respect to property in a particular brownfield revitalization zone,** the designating body may do the following:

(1) Limit the type of ~~deductions that will be allowed~~ **property that is eligible for a deduction** within ~~the~~ **a brownfield revitalization** zone to ~~either the deduction allowed under section 24 of this chapter.~~ **personal property or real property.**

(2) Limit the dollar amount of the individual or aggregate deductions that will be allowed with respect to personal property.

(3) Limit the dollar amount of the deduction that will be allowed with respect to real property.

(4) Impose reasonable conditions for allowing ~~the~~ **a** deduction for tangible property under this chapter. The conditions must have a

reasonable relationship to the development objectives of the area in which the designating body has jurisdiction.

To exercise one (1) or more of these powers a designating body must include this fact in the resolution **creating the brownfield revitalization zone that is** finally passed under section 13 of this chapter.

SECTION 7. IC 6-1.1-42-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1997 (RETROACTIVE)]: Sec. 25. A person who filed a written remonstrance with the designating body before the adjournment of the public hearing required in section 21 of this chapter and who is aggrieved by the final action taken may, within ten (10) days after that final action under section 24 of this chapter, initiate an appeal of that action by filing in the office of the clerk of the circuit or superior court a copy of the ~~order of the designating body~~ **resolution adopted under section 9 of this chapter, any modifications made under section 24 of this chapter,** and the person's remonstrance against ~~that order,~~ **the resolution,** together with a bond conditioned to pay the costs of the appeal if the appeal is determined against the person. The only ground of appeal that the court may hear is whether the proposed project will meet the qualifications for granting an assessed valuation deduction for the property under this chapter. The burden of proof is on the appellant.

SECTION 8. IC 6-1.1-42-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1997 (RETROACTIVE)]: Sec. 27. (a) A property owner who desires to obtain the deduction provided by section 24 of this chapter must file a certified deduction application, on forms prescribed by the state board of tax commissioners, with the auditor of the county in which the property is located. Except as otherwise provided in subsection (b) or (e), the deduction application must be filed before May 10 of the year in which the addition to assessed valuation is made.

(b) If notice of the addition to assessed valuation or new assessment for any year is not given to the property owner before April 10 of that year, the deduction application required by this section may be filed not later than thirty (30) days after the date such a notice is mailed to the property owner at the address shown on the records of the township assessor.

(c) The **certified** deduction application required by this section must contain the following information:

(1) The name of each owner of the property.

(2) A certificate of completion of a voluntary remediation under IC 13-25-5-16.

(3) Proof that each owner who is applying for the deduction:

(A) has never had an ownership interest in an entity that contributed; and

(B) has not contributed;

~~to contamination~~ **a contaminant** (as defined in ~~IC 13-11-2-43)~~ **IC 13-11-2-42)** that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management.

(4) Proof that the deduction was approved by the appropriate designating body.

(5) A description of the property for which a deduction is claimed in sufficient detail to afford identification.

(6) The assessed value of the improvements before remediation and redevelopment.

(7) The increase in the assessed value of improvements resulting from remediation and redevelopment.

(8) The amount of the deduction claimed for the first year of the deduction.

(d) A **certified** deduction application filed under subsection (a) or (b) is applicable for the year in which the addition to assessed value or assessment of ~~a new structure~~ **property** is made and each subsequent year to which the deduction applies under the resolution adopted under section 24 of this chapter.

(e) A property owner who desires to obtain the deduction provided by section 24 of this chapter but who has failed to file a deduction application within the dates prescribed in subsection (a) or (b) may file a deduction application between March 1 and May 10 of a subsequent year which is applicable for the year filed and the subsequent years without any additional **certified** deduction application being filed for the amounts of the deduction which would be applicable to such years under this chapter if such a deduction application had been filed in accordance with subsection (a) or (b).

(f) On verification of the correctness of a **certified** deduction application by the assessor of the township in which the property is located, the county auditor shall, if the property is covered by a resolution adopted under section 24 of this chapter, ~~the county auditor shall~~ make the appropriate deduction.

(g) The amount and period of the deduction provided for property by section 24 of this chapter are not affected by a change in the ownership of the property if the new owner of the property:

(1) is a person that:

(A) has never had an ownership interest in an entity that

contributed; and

(B) has not contributed;

~~to contamination~~ **a contaminant** (as defined in ~~IC 13-11-2-43)~~ **IC 13-11-2-42)** that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management;

(2) continues to use the property in compliance with any standards established under ~~section~~ **sections** 7 **and 23** of this chapter; and

(3) files an application in the manner provided by subsection (e).

(h) The township assessor shall include a notice of the deadlines for filing a deduction application under subsections (a) and (b) with each notice to a property owner of an addition to assessed value or of a new assessment.

SECTION 9. IC 6-1.1-42-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1997 (RETROACTIVE)]: Sec. 28. (a) Subject to this section, the amount of the deduction which the property owner is entitled to receive under this chapter for a particular year equals the product of:

(1) the increase in the assessed value resulting from the remediation and redevelopment in the zone or the location of personal property in the zone, **or both;** multiplied by

(2) the percentage determined under subsection (b).

(b) The percentage to be used in calculating the deduction under subsection (a) is as follows:

(1) For deductions allowed over a three (3) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	66%
3rd	33%

(2) For deductions allowed over a six (6) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	85%
3rd	66%
4th	50%
5th	34%
6th	17%

(3) For deductions allowed over a ten (10) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	95%

3rd	80%
4th	65%
5th	50%
6th	40%
7th	30%
8th	20%
9th	10%
10th	5%

(c) The amount of the deduction determined under subsection (a) shall be adjusted in accordance with this subsection in the following circumstances:

(1) If a general reassessment of real property occurs within the particular period of the deduction, the amount determined under subsection (a)(1) shall be adjusted to reflect the percentage increase or decrease in assessed valuation that resulted from the general reassessment.

(2) If an appeal of an assessment is approved that results in a reduction of the assessed value of the redeveloped or rehabilitated property, the amount of any deduction shall be adjusted to reflect the percentage decrease that resulted from the appeal.

(3) The amount of the deduction may not exceed the limitations imposed by the designating body under section 23 of this chapter.

(4) The amount of the deduction must be proportionally reduced by the proportionate ownership of the property by a person that:

(A) has an ownership interest in an entity that contributed; or

(B) has contributed;

~~to contamination~~ **a contaminant** (as defined in ~~IC 13-11-2-43)~~ **IC 13-11-2-42)** that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management.

The state board of tax commissioners shall adopt rules under IC 4-22-2 to implement this subsection.

SECTION 10. IC 6-1.1-42-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1997 (RETROACTIVE)]: Sec. 30. (a) Within forty-five (45) days after receipt of the information described in section 29 of this chapter, the designating body may determine whether the property owner has substantially complied with the statement of benefits filed under sections 6 and 18 of this chapter.

(b) If the designating body determines that the property owner has not substantially complied with the statement of benefits and that the failure to substantially comply was not caused by factors beyond the control of the property owner (such as declines in demand for the

property owner's products or services), the designating body shall mail a written notice to the property owner. The written notice must include the following provisions:

(1) An explanation of the reasons for the designating body's determination.

(2) The date, time, and place of a hearing to be conducted by the designating body for the purpose of further considering the property owner's compliance with the statement of benefits. The date of the hearing may not be more than thirty (30) days after the date on which the notice is mailed.

If a notice mailed to a property owner concerns a statement of benefits approved **for personal property** under section 24 of this chapter, the designating body shall also mail a copy of the notice to the state board of tax commissioners.

(c) On the date specified in the notice described in subsection (b)(2), the designating body shall conduct a hearing for the purpose of further considering the property owner's compliance with the statement of benefits. Based on the information presented at the hearing by the property owner and other interested parties, the designating body shall again determine whether the property owner has made reasonable efforts to substantially comply with the statement of benefits and whether any failure to substantially comply was caused by factors beyond the control of the property owner. If the designating body determines that the property owner has not made reasonable efforts to comply with the statement of benefits, the designating body shall adopt a resolution terminating the property owner's deduction under section 24 of this chapter. If the designating body adopts such a resolution, the deduction does not apply to the next installment of property taxes owed by the property owner or to any subsequent installment of property taxes.

(d) If the designating body adopts a resolution terminating a deduction under subsection (c), the designating body shall immediately mail a certified copy of the resolution to:

(1) the property owner;

(2) the county auditor; and

(3) the state board of tax commissioners if the deduction was granted **for personal property** under section 24 of this chapter.

The county auditor shall remove the deduction from the tax duplicate and shall notify the county treasurer of the termination of the deduction. If the designating body's resolution is adopted after the county treasurer has mailed the statement required by IC 6-1.1-22-8, the county treasurer shall immediately mail the property owner a

revised statement that reflects the termination of the deduction.

(e) A property owner whose deduction is terminated by the designating body under this section may appeal the designating body's decision by filing a complaint in the office of the clerk of the circuit or superior court together with a bond conditioned to pay the costs of the appeal if the appeal is determined against the property owner. An appeal under this subsection shall be promptly heard by the court without a jury and determined within thirty (30) days after the time of the filing of the appeal. The court shall hear evidence on the appeal and may confirm the action of the designating body or sustain the appeal. The judgment of the court is final and conclusive unless an appeal is taken as in other civil actions.

(f) If an appeal under subsection (e) is pending, the taxes resulting from the termination of the deduction are not due until after the appeal is finally adjudicated and the termination of the deduction is finally determined.

SECTION 11. IC 13-19-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. The environmental remediation revolving loan program is established to assist in the remediation of brownfields to encourage the rehabilitation, redevelopment, and reuse of real property by political subdivisions by providing loans, **forgivable loans,** or other financial assistance to political subdivisions to conduct any of the following activities:

(1) Identification and acquisition of brownfields within a political subdivision as suitable candidates for redevelopment following the completion of remediation activities.

(2) Environmental assessment of identified brownfields and other activities necessary or convenient to complete the environmental assessments.

(3) Remediation activities conducted on brownfields.

(4) The clearance of real property under IC 36-7-14-12.2 or IC 36-7-15.1-7 in connection with remediation activities.

(5) Other activities necessary or convenient to complete remediation activities on brownfields.

SECTION 12. IC 13-19-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) Based on the priority ranking system established under section 8 of this chapter, the authority may make loans or provide other financial assistance from the fund to or for the benefit of a political subdivision under this section.

(b) A loan or other financial assistance must be used for at least one (1) of the purposes under section 1 of this chapter and may be used for any of the following purposes:

(1) To establish reserves or sinking funds or provide interest subsidies.

(2) To pay financing charges, including interest on the loan or other financial assistance during remediation and for a reasonable period after the completion of remediation.

(3) To pay consultant, advisory, and legal fees, and any other costs or expenses resulting from:

(A) the assessment, planning, or remediation of a brownfield; or

(B) the loan or other financial assistance.

(c) Upon the recommendation of the authority and the approval of the budget agency, the interest rate or parameters for establishing the interest rate on each loan, including parameters for establishing the amount of interest subsidies, shall be established by the state board of finance.

(d) Not more than ten percent (10%) of the money available in the fund during a year may be loaned or otherwise provided to any one (1) political subdivision.

(e) Before a political subdivision may receive a loan or other financial assistance, including grants, from the fund, a political subdivision must submit the following:

(1) Documentation of community and neighborhood comment concerning the use of a brownfield on which remediation activities will be undertaken after remediation activities are completed.

(2) A plan for repayment of the loan or other financial assistance, if applicable.

(3) An approving opinion of a nationally recognized bond counsel **if required by the authority.**

(4) A summary of the environmental objectives of the proposed project.

(f) A political subdivision that receives a loan or other financial assistance from the fund shall enter into a financial assistance agreement. A financial assistance agreement is a valid, binding, and enforceable agreement of the political subdivision.

(g) With the approval of the budget agency, the authority may sell or assign:

(1) loans or evidence of other financial assistance; and

(2) other obligations of political subdivisions evidencing the loans or other financial assistance from the fund;

at any price and on terms acceptable to the authority. Proceeds of sales or assignments under this subsection shall be deposited in the fund. A

sale or an assignment under this subsection does not create a liability or an indebtedness of the state or the authority except, in the case of the authority, strictly in accordance with the sale or assignment terms.

(h) The authority may pledge loans or evidences of other financial assistance and other obligations of political subdivisions evidencing the loans or other financial assistance from the fund to secure other loans or financial assistance from the fund to or for the benefit of political subdivisions. The terms of a pledge under this subsection must be approved by the budget agency. Notwithstanding any other law, a pledge of property made by the authority and approved by the budget agency under this subsection is binding from the time the pledge is made. Revenues, other money, or other property pledged and then received are immediately subject to the lien of the pledge without any further act. The lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, the department, the budget agency, a trustee, or the fund, regardless of whether the parties have notice of a lien. A resolution, an indenture, or other instrument by which a pledge is created is not required to be filed or recorded, except in the records of the authority or the budget agency. An action taken to enforce a pledge under this subsection and to realize the benefits of the pledge is limited to the property pledged. A pledge under this subsection does not create a liability or an indebtedness of the state or the authority except, in the case of the authority, strictly in accordance with the pledge terms.

SECTION 13. IC 13-19-5-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 15. (a) The authority may deposit appropriations or other money received under this chapter after June 30, 1999, into a subaccount of the fund. The authority shall use money deposited in the subaccount to award forgivable loans to political subdivisions for remediation or other brownfield redevelopment activities. The authority shall, in the manner provided by section 11 of this chapter, adopt guidelines to establish a political subdivision's eligibility for a forgivable loan. The guidelines must provide priority for projects that:**

(1) involve abandoned gas stations or underground storage tank issues; or

(2) are located within one-half (0.5) mile of any of the following:

(A) A child care center (as defined by IC 12-7-2-28.4).

(B) A child care home (as defined by IC 12-7-2-28.6).

(C) A child caring institution (as defined by IC 12-7-2-29).

(D) A school age child care program (as defined by IC 12-17-12-5).

(E) An elementary or a secondary school attended by students in kindergarten or grades 1 through 12.

(b) Not more than twenty percent (20%) of the total amount of loans provided for a project under this chapter may be in the form of a forgivable loan.

(c) The financial assistance agreement for a project to be financed with a forgivable loan must specify economic development or redevelopment goals for the project that must be achieved before the political subdivision will be released from its obligation to repay the forgivable loan.

SECTION 14. IC 13-23-14-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. **(a) Except as provided in subsection (b),** a person who violates:

(1) a requirement or standard set forth in this article; or

(2) a rule adopted under IC 13-23-1-2 other than a violation described in section 2 of this chapter;

is subject to a civil penalty of not more than ten thousand dollars ($10,000) per underground storage tank for each day of violation.

(b) A person is not subject to the civil penalty described in subsection (a) if:

(1) the violation arose from an underground storage tank that is on a brownfield;

(2) the person was not the owner or operator of the underground storage tank when the violation first occurred;

(3) the person does not dispense a regulated substance into or from the underground tank:

(A) for any purpose other than temporary or permanent closure; or

(B) in violation of any federal, state, or local regulations; and

(4) the underground storage tank is brought into compliance with this article not later than one (1) year after the person acquired ownership of the property.

SECTION 15. [EFFECTIVE UPON PASSAGE] **(a) A brownfield revitalization zone that was established or a deduction in a brownfield revitalization zone that was granted after June 30, 1997, and before the passage of this act in conformity with IC 6-1.1-42, as amended by this act, is legalized and validated to the same extent as if the changes in this act had been part of P.L.59-1997.**

(b) A brownfield revitalization zone that was established or a deduction in a brownfield revitalization zone that was granted after June 30, 1997, and before the passage of this act, in response to an applicant that:

(1) had an ownership interest in an entity that contributed; or

(2) contributed;

a contaminant (as defined in IC 13-11-2-42) that is the subject of a voluntary remediation under IC 13-25-5 is void to the same extent as if this act had been part of P.L.59-1997.

SECTION 16. **An emergency is declared for this act.**